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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte HIDEAKI SHIMIZU

Appeal 2009-015037
Application 10/763,159
Technology Center 3700

Before SALLY G. LANE, SALLY C. MEDLEY and
MICHAEL P. TIERNEY, *Administrative Patent Judges*.

TIERNEY, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

A. STATEMENT OF THE CASE

This is a decision on appeal by the real party in interest, Nintendo Co., Ltd. [hereinafter “Appellant”], under 35 U.S.C. § 134(a), from a final rejection of claims 1-15, the claims on appeal. We have jurisdiction under 35 U.S.C. § 6(b).

We reverse.

References Relied on by the Examiner

Suzuki	U.S. 5,356,156	Oct. 18, 1994
Kaneko	U.S. 5,879,235	Mar. 9, 1999
Sciammarella	U.S. 6,608,633	Aug. 19, 2003
Oakes	U.S. 2003/0181241 A1	Sept. 25, 2003

The Invention

This invention pertains to a multi-user electronic game in which the display area apportioned to each individual is based on how well each player is doing in the game relative to the other players (Spec. 4:10-15).

Independent claim 1 is reproduced below (emphasis added):

1. A game apparatus used in association with a display, wherein a plurality of players participate and play a game on a display screen displayed on said display, said game apparatus comprising:
 - one or more game program storage areas for storing a game program;
 - an operating member operated by the player;
 - number-of-players detection programmed logic circuitry for detecting the number of players who participate in the game;
 - screen partitioning programmed logic circuitry for partitioning a display area included in said display screen by the number of the participating players, and forming a plurality of divided areas;
 - game image generating programmed logic circuitry for generating game images in each of said divided areas allotted to each player based on said game program and an operation from said operating member;

evaluating value setting programmed logic circuitry for setting an evaluating value of each player based on how well each player is doing in the game relative to the other players; and
size changing programmed logic circuitry for changing a size of said divided areas allotted to each player based on said evaluating value. (App. Br. Claims App'x 34).

The Rejections on Appeal

1. Claims 1, 2, 4, 5, 7, 8, 11, 12 and 15 are rejected as being obvious under 35 U.S.C. § 103(a) over Oakes in view of Suzuki (Ans. 3-4).
2. Claim 3 is rejected under 35 U.S.C. § 103(a) as being obvious over Oakes in view of Suzuki and further in view of Kaneko (Ans. 6).
3. Claims 6, 9, 10, 13 and 14 are rejected under 35 U.S.C. § 103(a) as being obvious over Oakes in view of Suzuki and further in view of Sciammarella (Ans. 8).

B. ISSUES

Would one of ordinary skill in the art of multi-user electronic games have had reason to adjust an individual's screen allotment based on relative game skill when it was known to enlarge a player's screen based on the location of an object moving across the screen?

C. FINDINGS OF FACT

1. Oakes discloses a multi-user electronic game in which separate screen areas are assigned to different controllers/players (Oakes ¶¶ [0052] – [0053]).
2. Oakes discloses the manual use of a remote to “adjust and vary the shape of one or more of the windows” in the split screen (Oakes ¶ [0055]).

3. Suzuki discloses a multi-user electronic game in which an object that moves between the players' respective screens always displays the screen where the object appears "in enlarged size" (Suzuki 2:28-31 and 3:16-18).
4. Suzuki's enlarged screen size is displayed based on the location of the moving object and not the offensive or defensive posture of the player (Suzuki 6:45 to 7:20 and 7:44-47).

D. PRINCIPLES OF LAW

"The factual predicates underlying an obviousness determination include the scope and content of the prior art, the differences between the prior art and the claimed invention, and the level of ordinary skill in the art." *In re Rouffet*, 149 F.3d 1350, 1355 (Fed. Cir. 1998).

E. ANALYSIS

Appellant separately argues independent claims 1, 9, 15 and dependent claim 3 (which depends from claim 1). Apparatus claim 1 and method claim 15 are rejected by the Examiner based on the same art and will be considered together (Ans. 3 and 9). Appellant's contentions are discussed below.

1. *Claims 1 and 15 are Not Obvious in View of Oakes and Suzuki*

Independent claim 1 requires circuitry that changes a player's allotted screen size "based on how well each player is doing" relative to the other players. Independent claim 15 requires that "a first player who is beating a second player" be given a larger screen partition.

The Examiner finds that Oakes discloses many of the required features of claim 1 but relies on Suzuki as disclosing the “evaluating value setting” circuitry, the “size changing” circuitry and the allotment of screen size “based on” the evaluating value (Ans. 4 and 5). Claim 15 is rejected by the Examiner who finds that Suzuki discloses enlarging a player’s display area based on whether the player is in an offensive (superior) or defensive (inferior) position (Ans. 5, 6 and 10). The Examiner further determined that Suzuki’s enlargement of the screen where the moving object appears does not teach away from the alternative where the screen enlargement is “a result of the player being in an advantageous offensive position” (Ans. 10).

Suzuki ascertains screen size based on which player’s screen contains the moving object (Suzuki 2:28-31 and 3:16-18). Suzuki does inquire as to whether a player is in an offensive position, but Suzuki’s screen enlargement is determined by where a moving object is located and not on any answer to this inquiry (Suzuki 6:45 to 7:20 and Fig. 7 flowchart). Suzuki teaches that an attacker’s screen is enlarged only so long as the object is in the attacker’s screen, once the object moves into the defender’s screen, then the defender’s screen is enlarged (Suzuki 7:44-47).

The Examiner has not demonstrated on this record that one skilled in the art would have had reason to allocate screen area based on relative player performance in view of allocations based on the position of a moving object. We reverse the Examiner’s rejection of claim 1 as being obvious over Oakes in view of Suzuki.

2. *Dependent Claim 3 is Not Obvious over Oakes in View of Suzuki and Further in View of Kaneko*

Claim 3 depends from claim 1 and further requires a “circular display” whose radial angle can vary based on player skill level. The Examiner finds that Kaneko discloses a multi-player game having a circular-shaped display area that can be divided into separate portions (Ans. 7 and 11). Kaneko’s screen discloses images related to a roulette wheel and does not teach apportioning the circular display based on how well each player is doing relative to the other players (Kaneko 9:9-12). We hold that Kaneko does not remedy the deficiency of the combination of Oakes and Suzuki discussed above. We reverse the Examiner’s rejection of claim 3 as being obvious over Oakes in view of Suzuki and further in view of Kaneko.

3. *Independent Claim 9 is Not Obvious over Oakes in View of Suzuki and Further in View of Sciammarella*

Claim 9 requires “end determining” circuitry that determines whether one of the players has ended the game and “re-partitioning” circuitry that allots the exiting player’s screen area to the remaining players “in accordance with how the remaining players are performing.” The Examiner finds that Sciammarella discloses a computer program that updates information displayed on a screen in response to detected changes; for example, if a program is no longer active or important, it would be removed from the screen and the remaining programs would fill the void (Ans. 9 and 12). Appellant contends that Sciammarella has no players and that it lacks “re-partitioning” circuitry that allocates available screen area based on how well the remaining players are performing (App. Br. 32). Appellant further

contends that Sciammarella also fails to make up for the deficiencies in the Oakes/Suzuki combination regarding determining whether one player is “doing better or worse than” another (App. Br. 32). We agree with Appellant and hold that Sciammarella does not remedy the deficiencies of Oakes and Suzuki discussed above. We reverse the Examiner’s rejection of claim 9 as being obvious over Oakes in view of Suzuki and further in view of Sciammarella.

F. CONCLUSIONS OF LAW

One of ordinary skill in the art of multi-user electronic gaming would not have had reason to adjust an individual’s screen allotment based on relative game skill when it was known to enlarge a player’s screen based on the location of an object moving across the screen.

G. ORDER

1. The rejection of claims 1, 2, 4, 5, 7, 8, 11, 12 and 15 as being obvious under 35 U.S.C. § 103(a) over Oakes in view of Suzuki is reversed.
2. The rejection of claim 3 under 35 U.S.C. § 103(a) as being obvious over Oakes in view of Suzuki and further in view of Kaneko is reversed.
3. The rejection of claims 6, 9, 10, 13 and 14 under 35 U.S.C. § 103(a) as being obvious over Oakes in view of Suzuki and further in view of Sciammarella is reversed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

REVERSED

Appeal No. 2009-015037
Application No. 10/763,159

bim

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